

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.19451 OF 2016

Date: 01.03.2018

Between:

The Naval Armament Depot Civil Employees Co-op.
Society Ltd., No.B 1152, Visakhapatnam, rep.by its
Secretary Sri K.Satyanarayana, having its office at
NAD Junction, Visakhapatnam City, Visakhapatnam
District and others.

.....Petitioners

and

State of Andhra Pradesh, rep.by its Principal
Secretary to Government, Agriculture and Cooperation
Department, Secretariat, Saifabad, Hyderabad and
others.

.....Respondents



The Court made the following:

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ORDER:

First petitioner is the Employees Cooperative Society and petitioners 2 to 10 are the Directors of the society and members of the managing committee. Second petitioner was President, 3rd petitioner was Vice President, 4th petitioner was Secretary, 5th petitioner was Assistant Secretary, 6th respondent was Treasurer. In this writ petition, petitioners challenge proceedings of the Joint Registrar/District Cooperative Officer, dated 16.10.2015 appointing Divisional Cooperative Officer, Visakhapatnam as Inquiry Officer to conduct inquiry under Section 51 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'Act') into the constitution, working and financial affairs of first petitioner society. Notice dated 28.05.2016 was issued under Section 34(1) of the Act, calling upon the petitioners 2 to 10 herein as to why Managing Committee should not be superseded, and persons-in-charge be appointed to manage affairs of the first petitioner society.

2. By order dated 20.06.2016, Court granted interim stay as prayed by petitioners. Praying to vacate interim order, the Government as well as unofficial respondents filed vacate petitions. When vacate petitions were taken up for consideration, counsel representing respective parties have agreed for disposal of writ petition. By this order, writ petition is disposed of finally.

3. Heard learned counsel for petitioners, learned Government Pleader for respondents 1 to 4 and Sri V.V.N.Narayana Rao, for respondents 6 to 11.

4.1. Learned counsel for petitioners would contend that as per Section 51 of the Act, Registrar is alone competent to conduct inquiry. As per the orders of the Government issued in G.O. Ms. No. 34 Food and Agriculture (Coop.IV) Department dated 16.01.1989, powers exercisable by the Registrar were delegated to Special Cadre Deputy Registrar of Cooperative Societies working as District Cooperative Officers and Deputy Registrar of Cooperative Societies only to the extent mentioned therein. Powers of control and superintendence, particularly power to conduct enquiry under Section 51 is not vested in the 3rd respondent. First petitioner society is a Primary Society falling under Rule 12(b) and 12(5)(C)(iii) and the Registrar of Co-operative societies alone is competent.

4.2. He would further submit that as District Cooperative Officer is not vested with power to conduct inquiry against 1st petitioner-society, he cannot order conducting of inquiry under Section 51 of the Act. Thus, procedure followed by respondents, initiating proceedings under Section 51 of the Act and conducting inquiry is *ex facie* illegal and, therefore, all consequential proceedings pursuant to the orders of the District Cooperative Officer dated 16.10.2015 are not valid in law.

4.3. It is further contended that principles of natural justice are violated as petitioners 2 to 10 were not put on notice, opportunity of hearing was not afforded to them and without appreciating the

explanation of the petitioners, the Inquiry Officer submitted his report and, therefore, inquiry proceedings are vitiated on this ground also.

4.4. He would further submit that even assuming initiation of proceedings under Section 51 of the Act was validly made, there is no justification to supersede the duly elected Managing Committee by invoking power under Section 34 of the Act and on that ground also, proceedings are liable to be set aside.

5.1. By drawing attention to the definition in Section 2 (n) of the Act read with Section 3 and G.O.Ms.No.34, learned Government Pleader would submit that 'Registrar' as defined not only includes the Registrar of Cooperative Societies, but any other authority on whom all or any of the powers of the Registrar are vested by the competent authority. Section 3 of the Act requires appointment of Registrar for the State and as many other persons as the Government thinks fit and every other person appointed under Section 3 shall exercise same powers as exercisable by the Registrar. In exercise of powers vested in the Government under Section 3, Government issued notification vide G.O.Ms.No.34 conferring various powers vested in the Registrar traceable to the Act, 1964, on hierarchy of officers. Sl.No.2 of the schedule appended to the notification deals with powers exercisable by the Special Grade Deputy Registrar of cooperative societies/ District Cooperative Officers. As per Column- 2, Special Cadre Deputy Registrar is vested powers to inquire into under Section 51 of the Act into functioning of primary societies and first petitioner society is a primary society. According to learned Government Pleader, as

per G.O.Ms.No.34 only with reference to few of the provisions mentioned in Column-4, the District Cooperative Officer is ousted of powers exercisable by the Registrar of Cooperative Societies.

5.2. He would submit that before initiating inquiry under section 51 to find out veracity in the complaint made by members of the society, preliminary inquiry was conducted and based on the report of preliminary inquiry, action was initiated under Section 51. He further submits that as per Section 51 of the Act, the Registrar may conduct inquiry on his own or he can appoint any other person to conduct inquiry. In valid exercise of power under Section 51, third respondent appointed the 4th respondent as Inquiry Officer to enquire into affairs of the society.

5.3. He further submits that procedure as required by the Act was followed before submitting the report of inquiry. Notices were served. The explanation filed by the persons were considered before submitting the report of the inquiry and, therefore, it cannot be said that due opportunity was not afforded to the petitioners to contend that inquiry report and the consequential order is vitiated on that ground.

5.4. He further submits that as findings of Inquiry Officer in his report are adverse to the functioning of the Managing Committee and there was a serious allegation of misappropriation of funds of the society, the competent authority deemed it necessary to supersede the Committee and to appoint the Special Officer. According to learned Government Pleader, as per orders of the Government in G.O.Ms.No.34, Deputy Registrar of Cooperative

Societies is vested with powers to supersede the primary society and power is validly exercised by the Deputy Registrar.

5.5. He further submits that by way of notification issued in exercise of power under Section 3 of the Act, notified vide G.O.Ms.No.19 Agricultural and Cooperation (Coop.IV) Department, dated 01.02.1995, the word “Special Cadre Deputy Registrars of Cooperative Societies” against Sl.No.2 in G.O.Ms.No.34 was deleted. Thus, against Sl.No.2 the words Officer designated stands as District Cooperative Officer i.e., 3rd respondent in the writ petition.

5.6. Learned Government Pleader placed reliance on the following decisions:

Judgment in **WA No.1620 of 2017, dated 3.11.2017;**
Judgment in **WA No.265 of 2000 dated 29.3.2000¹; Pothana Tata Rao v. Govt. of A.P. rep.by its Secretary, Food & Agriculture Dept., Secretary, Hyderabad and others²; M.Chandrasekhara Reddy v. The Deputy Registrar of Co-op. Societies, Gudur, Nellore District and others³; and Voltas Employees’ Coop. House Building Society, Secunderabad and Registrar cum Commissioner for co-operative Societies, Govt. of A.P., Hyderabad and others⁴.**

6. Sri V.V.N.Narayana Rao supplemented the submissions made by the learned Government Pleader. He would submit that first petitioner society is a primary society. As per column-3 in the

¹ Manu/AP.0350/2000

² 1991 (II) ALT 13

³ 1993 (1) ALT 529 (DB)

⁴ 2004 (3) ALD 234

Annexure appended to G.O.Ms.No.34, 1st petitioner being primary society the District Cooperative Officer is competent to conduct inquiry under Section 51 of the Act.

7. Writ petition is instituted by taking the plea that the District Cooperative Officer is not competent to conduct inquiry under Section 51 and that the 1st petitioner society is not amenable to its jurisdiction and, therefore, appointing 4th respondent as Inquiry Officer, 4th respondent conducting inquiry and submitting report under Section 51 and 4th respondent issuing further proceedings under Section 34 are all vitiated.

8. To appreciate this contention, it is necessary to consider scope of Sections 2 (n), 3, 34 and 51 of the Act and Rule 2(j), Rule 12 (1) & 5 and 12-A.

9. As per the definition in clause (n) in Section 2, 'Registrar' includes the Registrar of Cooperative Societies for the State as well as any other person on whom powers vested in the Registrar are also conferred. Section 3 vests power in the Government to appoint Registrar of Cooperative Societies for the State and other persons to exercise powers by the Registrar. In exercise of this power, Government issued notification, published vide G.O.Ms.No.34, specifying the powers that can be exercised by the hierarchy of Officers under various provisions of the Act. G.O. also specifies category of societies on which appropriate cadre officer in the hierarchy can exercise powers of supervision and control and to take disciplinary action under various provisions of the Act. In the said manner, the District Cooperative Officer is vested power of Registrar under various provisions of the Act including Sections 34

and 51 of the Act. In column-3, types of cooperative societies against which such power can be exercised is mentioned in paragraph-2. In column-3, among other societies the primary societies are also included.

10. As per Rule 2 (j), 'primary society' means a society whose membership consist of individuals. The petitioner society is the primary society, but exclusively concerned with extending credit facility to the members of the society. Therefore, it is also a 'credit society'. As per rule 12(2)(b), a society can be classified as 'credit society' if its principal object is raising of funds to be lent to its members. 'Primary society' can also be a 'credit society' if the principal object of that primary society is raising of funds to be lent to its members.

11. Learned counsel for petitioners placed heavy reliance on Sub-rule 5 of Rule 12. Sub-Rule 5 deals with further classification of 'federal society'. Section 2(e) of the Act defines 'federal society' as society to which similar class of societies are affiliated. In other words, existing primary societies having principal object of raising funds and lending to its members can join a federal society. Admittedly, first petitioner society is not a federal society. Therefore, Rule 12(5) is not attracted. Thus, it being a primary society, it is amenable to the jurisdiction of District Cooperative Officer.

12. Being competent authority, the District Cooperative Officer, 3rd respondent, ordered inquiry under Section 51 of the Act. From plain language employed in Section 51 of the Act, the District Cooperative Officer can conduct inquiry on his own or can appoint

any other person to conduct inquiry. In the instant case, the District Cooperative Officer, appointed the Deputy Registrar to conduct inquiry. Therefore, orders dated 16.10.2015 where under 4th respondent was appointed as Inquiry Officer to conduct inquiry into affairs of first petitioner society are made in valid exercise of power and contention of learned counsel for petitioners against invalidity of the said orders is stated to be rejected.

13. Learned counsel for petitioners next contended that due opportunity was not afforded to the petitioners before conducting inquiry and submitting report of the inquiry officer. This assertion of the petitioners was categorically denied by the respondents in paragraph-7 as well as in answer to the grounds urged in the writ petition. It is asserted that summons were issued to petitioners on 14.12.2015. Petitioners received the summons and submitted their written statements. Inquiry Officer considered the material on record and submitted his report. This assertion of the respondents is not denied. It is seen from report of the Inquiry Officer, members of the Managing Committee, petitioners 2 to 10, have submitted individual letters in response to notices. Even though summons were served on petitioners, they failed to avail the opportunity afforded to them. Inquiry officer considered the contents of the said letters and by examining the material on record, he has submitted his report. They cannot blame the Inquiry Officer for conducting inquiry and submitting report based on material on record and considering the depositions of complainants. Thus, it cannot be said that enquiry is vitiated to nullify enquiry report on this ground.

14. The inquiry officer found several illegalities in the functioning of the society and held that Managing Committee is liable for surcharge under Section 60 of the Act and to pay interest. Section 34 vests power in the Registrar to supersede the existing Managing Committee and appoint either a person or a committee of two or more persons to manage the affairs of the society. To exercise this power, section requires the Registrar to come to an opinion that committee is not functioning properly or willfully disobeyed or fails to comply willfully with any lawful order or direction of the Registrar. Section 34 vests discretion in the Registrar to cause notice before passing order to supersede the Managing Committee. As noted above, report of the Inquiry Officer points out grave illegalities in the functioning of Managing Committee and advises taking proceedings under Section 60 of the Act. The Deputy Registrar of Cooperative Societies is authorized to exercise power under Section 34. Thus, it is competent for the Deputy Registrar of Cooperative Societies, to invoke power under section 34 to supersede the Managing Committee of the first petitioner society. Material on record would disclose that no illegality committed in resorting to Section 34 to supersede the Managing Committee of the first petitioner society.

15. Learned Government pleader placed on record five decisions referred to above.

15.1 In W.A.No.1620 of 2017, one of the issues for consideration of the Division Bench was on competence of the District Collector to initiate proceedings under Section 60(1) of the Act. By placing reliance on G.O.Ms.No.34, it was contended that District Collector

was not competent. It was contended that as the G.O.Ms.No.34 did not specifically mention the exercise of power under Section 60 on the District Collector, but only vested in the Special Cadre Deputy Registrar, therefore, the District Collector was not competent. This contention was repelled. The division bench held that as the District Collector was delegated all the powers of Registrar other than those specifically excluded statutory provisions referred to in the relevant column of schedule and as section 60 of the Act was not referred to therein, he is conferred power of Registrar including the power under Section 60.

15.2. In WA No.265 of 2000, the validity of G.O.Ms.No.34 was upheld by the Division Bench. Division Bench observed as under:

“11. Delegation of power is an Administrative act, and it is for the delegating authority in exercise of administrative powers to determine and decide as to with respect to which societies or with respect to whom or with respect to which powers he would like to delegate. No fault can be found with the impugned G.O. reconferring the powers, delegated earlier to the subordinates, upon the principal officer i.e., the Registrar, in respect of five societies only and excluding the others, and we assume that the authorities, while revoking the delegation made earlier to the officers subordinate to the Registrar, have kept in mind the basis on which the societies can be classified as ordained under Section 18 of the Act read with Rule 12 of the Rules. Simply because powers have been reinvested in the Registrar, it cannot be said that the right of filing revision or appeal against the orders of the Registrar has been curtailed.”

15.3. In **Pothana Tata Rao**, by referring to the definition of Registrar in Section 2 (n) of the Act Division Bench held that Registrar not only means the Registrar of Cooperative Societies appointed under the Act, but includes any other person on whom all or any of the powers of the Registrar under the Act were

conferred. Same view is taken by the learned single Judge of this Court in **Voltas Employees Cooperative House Building Society** and in **M.Chandrasekhara Reddy**.

16. In view of the law laid down in precedent decisions and on closer scrutiny of relevant provisions of the Act and the Rules made therein, there is no pale of doubt that 3rd respondent, District Cooperative Officer, is competent to exercise powers under Section 51 of the Act and to order inquiry against first petitioner society. Further, as the findings in inquiry are adverse to the Managing Committee of the first petitioner society, the Deputy Registrar of Cooperative Societies has validly initiated proceedings under Section 34 of the Act to supersede the Managing Committee.

17. I therefore do not see any illegality in the orders impugned warranting interference by this court. Writ petition deserves to be dismissed and it is accordingly dismissed. Pending Miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 01.03.2018
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